

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*City of Fargo, North Dakota v. Purdue
Pharma L.P. et al.*

Case No. 3:19-cv-00139-DLH-ARS,
(District of North Dakota)

MDL No. 2804

Case No. 1:17-md-2804-DAP

Judge Dan Aaron Polster

**PLAINTIFF CITY OF FARGO’S RESPONSE TO PLAINTIFFS’ RENEWED AND
AMENDED MOTION FOR CERTIFICATION OF RULE 23(b)(3) CITIES/COUNTIES
NEGOTIATION CLASS**

Plaintiff, the City of Fargo, North Dakota, hereby submits this response to Plaintiffs’ Renewed and Amended Motion for Class Certification of a Settlement Class (“Amended Motion”) (Dkt. No. 1820) to address the narrow issue of its exclusion from the litigating entities voting pool. To the degree this Court is inclined to grant the Amended Motion, the City of Fargo respectfully requests that it be included as a litigating entity for the reasons set forth below.

I. Relevant Procedural History

On June 14, 2019, Plaintiffs filed their Notice of Motion and Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class (“Motion”), identifying two categories of voting pools in the event of a global settlement offer: “litigating” and “non-litigating” entities. (Dkt. No. 1683 at 40, n. 6.). The Motion defined a “litigating” entity as one who has an existing lawsuit, in any federal or state court, on file as of June 14, 2019 (hereinafter, “Litigating Entities”). The City of Fargo was not notified of this cutoff prior to the filing.

The Motion was withdrawn, and the Court granted Plaintiffs’ request for additional time and leave to file an Amended Motion by July 9, 2019. (Dkt. No.1745.) The Amended Motion

again proposes two voting pools and again defines the Litigating Entities as only those that filed suit as of June 14, 2019. (Dkt. No. 1820 at 9.)

The City of Fargo filed its complaint against multiple opioid manufacturing and distributing defendants on July 9, 2019 in the District of North Dakota, *City of Fargo, North Dakota v. Purdue Pharma L.P.*, Case No. 3:19-cv-00139-DLH-ARS (D.N.D. July 9, 2019), and is set to be transferred to these MDL proceedings for pretrial purposes in CTO-103.

II. The City of Fargo Should Be Included Among the Litigating Entities.

While the City of Fargo understands that a filing cutoff date may be appropriate, it respectfully requests that the filing cutoff for “Litigating Entities” either be extended to at least July 9, 2019, or that it be added to the Litigating Entities for the reasons set forth herein.

When the Motion was initially filed on June 14, 2019, the City of Fargo was in the process of investigating claims and identifying outside counsel to move forward on the litigation. The City of Fargo was unaware that continuing its investigation for a few weeks longer could impact its ability to fully participate in the litigation. Upon receiving notice, it acted swiftly to retain its counsel, complete its investigation and get its complaint on file by July 9, 2019, the date the Amended Motion would be filed.

The City of Fargo intends to participate actively in the litigation and will not be an absent class member. It has filed a complaint and will bear the same burdens and litigation risks as the other entities in this multidistrict litigation (“MDL”), including submitting a Plaintiff Fact Sheet, engaging in discovery, preserving and producing documents, and preparing its case for trial, if necessary. A public entity’s decision to file a lawsuit is a serious commitment. As this Court knows, public entities face multiple hurdles to file a lawsuit. The entity must assess its need for outside counsel and interview law firms, the facts must be investigated and evaluated by the city

attorney and elected officials must review and approve the proposal. The cutoff date should not be a surprise.

Additionally, no parties will be prejudiced by including the City of Fargo as a Litigating Entity. The City of Fargo took the necessary steps to file its lawsuit by July 9, 2019, and no Negotiation Class has yet been certified. There is no reason the City of Fargo should be treated differently in the event of a global settlement merely because it filed its complaint shortly after June 14, 2019.

It also bears noting that the City of Fargo has been actively participating in the fight against the opioid epidemic, has supported the litigation indirectly and has now filed a complaint in federal court to further commit itself to working with other North Dakota entities to litigate on behalf of their share interests. Fargo is the largest city in North Dakota and in Cass County, which filed its complaint in federal court on March 26, 2019. Cass County is a proposed Litigating Entity and a proposed settlement Class Representative. (Dkt. No. 1820, p. 1.) The City of Fargo and Cass County share a majority of residents and their interests are closely aligned. The City of Fargo operates the Fargo Cass Public Health department, for example, which serves all Cass County residents¹ and provides significant opioid-related services throughout the County, including, free Naloxone training.² If the North Dakota cases go to trial in the District of North Dakota, it is very likely they will be tried together. City of Fargo seeks to be an active partner in that endeavor as a Litigating Entity.

¹ City of Fargo website, available at: <http://fargond.gov/city-government/departments/fargo-cass-public-health> (last visited July 21, 2019).

² Fargo Cass Public Health Offers Naxolone Training, Angela Shen, KVRr, Sept. 26, 2018, available at: <https://www.kvrr.com/2018/09/26/fargo-cass-public-health-offers-free-naloxone-training/> (last visited July 2, 2019).

III. Conclusion

The City of Fargo is prepared to fulfill the same obligations as the other entities participating in the MDL and should be included as a Litigating Entity in the event this Court grants the Amended Motion.

Respectfully submitted,

/s/ Jennie Lee Anderson

JENNIE LEE ANDERSON (SBN 203586)
ANDRUS ANDERSON LLP
155 Montgomery Street, Suite 900
San Francisco, CA 94104
Telephone: (415) 986-1400
Facsimile: (415) 986-1474
jennie@andrusanderson.com

ERIK R. JOHNSON
City Attorney
City of Fargo
505 Broadway, Suite 206
Fargo, ND 58102
ejohnson@lawfargo.com

Attorneys for the City of Fargo, North Dakota